

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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:
UNITED STATES OF AMERICA, : Criminal Action No.
:
versus : 1:18-MJ-196
:
GEORGE AREF NADER, :
:
Defendant. : June 10, 2019
-----x

The above-entitled Preliminary hearing was heard by
the Honorable Theresa C. Buchanan, United States Magistrate
Judge.

A P P E A R A N C E S

FOR THE GOVERNMENT: JAY PRABHU, AUSA
LAURA FONG, AUSA
US Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314

FOR THE DEFENDANT: JONATHAN S. JEFFRESS, ESQ.
KaiserDillon PLLC
1401 K Street NW
Suite 600
Washington, DC 20005

TIMOTHY MCCARTEN, ESQ.
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022-4834

OFFICIAL COURT REPORTER: MS. TONIA M. HARRIS, RPR
United States District Court
Eastern District of Virginia
401 Courthouse Square, Ninth Floor
Alexandria, VA 22314

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P R O C E E D I N G S

(Court proceedings commenced at 3:05 p.m.)

THE DEPUTY CLERK: United States versus George Nader. Case 18-MJ-196.

MR. PRABHU: Good afternoon, Your Honor. Jay Prabhu and Laura Fong for the Government.

THE COURT: Mr. Prabhu.

MR. JEFFRESS: Good afternoon, Your Honor. Jon Jeffress and Tim McCarten on behalf of --

THE COURT: Good afternoon.

MR. JEFFRESS: Thank you, Your Honor.

THE COURT: This is on for a preliminary and a detention hearing. Did you wish to go forward with both of those today, Counsel?

MR. JEFFRESS: Your Honor, I believe the detention hearing was already had. Okay. So --

THE COURT: Was that a full detention hearing?

MR. PRABHU: Yes, Your Honor. It lasted about a hour.

THE COURT: Okay. So did you want to proceed with the preliminary hearing today?

MR. JEFFRESS: Yes, please, Your Honor.

THE COURT: All right. Who is the Government's first witness?

MS. FONG: Good afternoon, Your Honor. United

1 States calls Alix Skelton to the stand.

2 **Thereupon,**

3 **ALIX SKELTON,**

4 having been called as a witness on behalf of the Government
5 and having been first duly sworn by the Deputy Clerk, was
6 examined and testified as follows:

7 THE DEPUTY CLERK: You may be seated.

8 THE WITNESS: Thank you.

9 (Witness seated.)

10 **DIRECT EXAMINATION**

11 BY MS. FONG:

12 Q. Please state your name and spell it for the record.

13 A. Alix, A-l-i-x, Skelton, S-k-e-l-t-o-n.

14 Q. Where do you work?

15 A. The FBI.

16 Q. What's your position with the FBI?

17 A. Special Agent.

18 Q. Are you assigned to a particular squad?

19 A. I am. The Child Exploitation and Human Trafficking Task
20 Force out of Washington Field Office.

21 Q. And are you a Special Agent with the FBI?

22 A. I am.

23 Q. What are your primary duties as a Special Agent with your
24 particular squad?

25 A. I investigate all matters of violent crimes against

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A. Skelton - Direct

5

1 children, to include sexual exploitation, kidnappings, sex
2 trafficking of minors, and other Internet-related crimes
3 against children.

4 Q. Are you one of the agents assigned to this matter?

5 A. I am.

6 Q. As one of the agents assigned to this matter, have you
7 reviewed some of the material from the investigation as it
8 pertains to probable cause?

9 A. Yes.

10 Q. Are you aware of whether the investigation obtained
11 photographs of George Nader from Government-issued ID's?

12 A. Yes.

13 Q. And have you had a chance to review those photographs?

14 A. I have.

15 Q. Do you see a person in the courtroom today whose
16 appearance matches that of known photographs of George Nader?

17 A. I do.

18 Q. Could you please identify George Nader by what he is
19 wearing and where he is sitting?

20 MR. JEFFRESS: We stipulate, Your Honor.

21 THE COURT: All right. Thank you.

22 BY MS. FONG:

23 Q. Special Agent Skelton, did you prepare an affidavit in
24 support of a criminal complaint in this case?

25 A. I did not.

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A. Skelton - Direct

6

1 Q. Have you nonetheless reviewed the complaint affidavit and
2 and its allegations?

3 A. I have.

4 Q. Have you reviewed the evidence underlying the complaint
5 affidavit, in particular, the videos described within it?

6 A. Yes.

7 Q. And have you spoken to your colleague who was the affiant
8 for the complaint?

9 A. Yes.

10 Q. With the help with the court security officer, I would
11 like to provide you with a copy of what has been marked as
12 Government Exhibit 1.

13 MS. FONG: And I would like the record to reflect
14 that I am giving a copy to defense counsel.

15 BY MS. FONG:

16 Q. Do you recognize this document, Special Agent Skelton?

17 A. I do.

18 Q. What is it?

19 A. It is the affidavit in support of the criminal complaint.

20 Q. Is the information contained in Government Exhibit 1 a
21 true and accurate reflection of the facts as known at the time
22 the affidavit was executed?

23 A. Yes.

24 Q. Do you have any corrections or additions you would like
25 to make at this time?

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A. Skelton - Direct

7

1 A. No.

2 Q. For the purposes of today's hearing, do you incorporate
3 and adopt the facts as set forth in the affidavit as part of
4 your testimony?

5 A. I do.

6 Q. All right.

7 MS. FONG: At this time, the Government moves the
8 document marked as Government Exhibit 1 into evidence.

9 THE COURT: Any objection, Counsel?

10 MR. JEFFRESS: No objection.

11 THE COURT: It is admitted.

12 (Government's Exhibit No. 1
13 admitted into evidence.)

14 BY MS. FONG:

15 Q. I would like to ask you a couple more follow-up
16 questions, Special Agent Skelton.

17 Does the complaint detail material found on an
18 iPhone seized from George Nader?

19 A. Yes.

20 Q. Was the iPhone seized from George Nader at Washington
21 Dulles International Airport in January of 2018?

22 A. Yes.

23 Q. And is that airport within the Eastern District of
24 Virginia?

25 A. It is.

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A. Skelton - Direct

8

1 Q. After the phone was seized, did a forensic examiner
2 analyze the phone?

3 A. Yes.

4 Q. And did the forensic process retrieve certain chat
5 messages from the phone?

6 A. Yes.

7 Q. And did some of the chat messages contain videos?

8 A. Yes.

9 Q. And are some of the videos described in paragraph 16 of
10 the complaint in affidavit?

11 A. They are.

12 Q. Are you aware of whether time stamp information,
13 associated with the videos, was retrieved during the forensic
14 process?

15 A. Yes, it was.

16 Q. And were you able to draw any conclusions from the
17 presence of time stamp information?

18 A. The fact that these videos contained date and time stamps
19 from when they were either sent or received indicates to me
20 that they were not in deleted status. So they were active on
21 the phone at the time the phone was seized and analyzed.

22 Q. Are you aware of whether forensics retrieved any
23 information indicating whether the videos described in the
24 complaint affidavit were sent or received?

25 A. Yes.

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A. Skelton - Direct

9

1 Q. And what was that information?

2 A. Two of the videos were sent and ten of the videos were
3 received.

4 Q. I would like you to now turn your attention to paragraph
5 16B and C of the affidavit.

6 Do you recall reviewing the videos described in
7 paragraphs 16B and C?

8 A. Yes.

9 Q. And can you describe what is occurring in the videos?

10 A. In video number 2, there is a child, a boy about toddler
11 age, two to three years old, sitting on the floor. There's a
12 toy bunny in his lap, in his crotch.

13 THE COURT: We don't need to have her repeat the
14 testimony that's already in the affidavit.

15 MS. FONG: Noted, Your Honor.

16 BY MS. FONG:

17 Q. Special Agent Skelton, how many investigations into child
18 exploitation offenses have you been involved in during the
19 course of your time at the FBI?

20 A. Somewhere between dozens and hundreds.

21 Q. And are you familiar with the definition of "sexually
22 explicit conduct" as set forth in United States --

23 (Reporter clarification.)

24 BY MS. FONG:

25 Q. -- Code Section 2256(2)(A)?

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A. Skelton - Direct/Cross

10

1 A. Yes.

2 Q. In your opinion, do the videos, described in the
3 complaint affidavit, contain sexually explicit conduct
4 depicting minors?

5 A. Yes, they do.

6 MS. FONG: Your Honor, nothing further as to
7 probable cause from the Government.

8 But, I would like to note that we have a disk
9 containing copies of videos described in the complaint
10 affidavit, if Your Honor should wish to review this material.

11 THE COURT: No.

12 MS. FONG: Okay. Thank you.

13 THE COURT: Cross-examination.

14 **CROSS-EXAMINATION**

15 BY MR. JEFFRESS:

16 Q. Good afternoon, Agent Skelton.

17 A. Good afternoon.

18 Q. Agent Skelton --

19 MR. JEFFRESS: For the record, Your Honor, I have
20 made a Jencks request from the Government, and I've received
21 information that there are no Jencks, but if I could just
22 briefly inquire of the witness.

23 THE COURT: Okay.

24 MR. JEFFRESS: Thank you.

25 BY MR. JEFFRESS:

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A. Skelton - Cross

11

1 Q. Have you prepared any 302s for this particular
2 investigation?

3 A. I have not.

4 Q. Have you testified in the Grand Jury for this
5 investigation?

6 A. I have not.

7 Q. Have you done any paperwork whatsoever?

8 A. I have not.

9 Q. Any notes?

10 A. Nope.

11 Q. Okay. How long have you been on the -- you said you're
12 on the Child Exploitation Task Force?

13 A. Yes, sir.

14 Q. And how long has that been?

15 A. I've been on this task force here, at the Washington
16 Field Office, for just about three years. I was on a similar
17 squad in a different field office prior to my assignment here
18 at WFO.

19 Q. Okay. What was the other office?

20 A. Albany Division Syracuse Resident Agency.

21 Q. Okay.

22 A. Upstate New York.

23 Q. I see.

24 And you estimate you participated in between dozens
25 to a hundred federal child pornography investigations?

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1 A. Yes, sir.

2 Q. Okay. So you adopted Government's Exhibit No. 1, which
3 is the affidavit submitted by Agent Delacourt in this case; is
4 that correct?

5 A. Yes.

6 Q. And did you work with Agent Delacourt in preparing this
7 affidavit?

8 A. I did not.

9 Q. Okay. But you are familiar with its contents and you
10 adopted it during your direct testimony?

11 A. Yes, sir.

12 Q. All right. So I think I'll go through the affidavit and
13 ask various questions about the affidavit you've adopted,
14 okay?

15 A. Yes, sir.

16 Q. Let's start with paragraph 10.

17 Are you there?

18 A. Yes.

19 Q. Okay. And that paragraph concerns the seizure of three
20 iPhones, actually, that Mr. Nader had in his possession when
21 he came in January of 2018; is that correct?

22 A. Correct.

23 Q. All right. And in fact, what it reflects is the Customs
24 and Border Patrol agents questioned Mr. Nader about his -- the
25 number of electronic devices he had, correct?

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A. Skelton - Cross

13

1 A. It's my understanding he was interviewed at that time. I
2 do believe it was CBP, correct.

3 Q. Okay. And Mr. Nader, based on your impression, what you
4 understand from Agent Delacourt and from the affidavit, Mr.
5 Nader voluntarily and truthfully informed the Customs and
6 Border Patrol agents about the number of iPhones he had,
7 correct?

8 A. Correct.

9 Q. And that include iPhone numbers -- I'm sorry, iPhone 7 or
10 model 7?

11 A. Correct.

12 Q. Which is the iPhone sort of underlying the rest of this
13 affidavit?

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. All right. So Mr. Nader told them about that up front?

18 A. As far as I'm aware.

19 Q. Okay. And they seized the -- and then at a later date,
20 they executed a search warrant to seize that iPhone along with
21 two others?

22 A. That's my understanding.

23 Q. Okay. And then in paragraphs 13 to 14 of your affidavit,
24 you address the -- or, I'm sorry, Agent Delacourt addresses
25 the search of those iPhones, correct?

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1 A. Yes.

2 Q. All right. Now and neither you nor Agent Delacourt have
3 ever actually been in possession or analyzed the iPhone 7 that
4 undercut -- that is the basis for this affidavit, correct?

5 A. I know that I have not. I can't speak to whether Agent
6 Delacourt has or has not.

7 Q. Okay. But you've reviewed this affidavit?

8 A. Yes, sir.

9 Q. And you've talked to Agent Delacourt?

10 A. Yes, sir.

11 Q. And what it seems to reflect is that, in fact, Agent
12 Delacourt was given a disk or a thumb drive that contained the
13 images?

14 A. Correct.

15 Q. And did not have access to the phone himself?

16 A. My understanding is that he reviewed a forensic
17 extraction completed from the phone. Whether he also
18 possessed the phone, I can't speak to.

19 Q. Okay. It certainly doesn't say that in here?

20 A. Correct.

21 Q. All right. And you've never had possession of the iPhone
22 7?

23 A. No, sir.

24 Q. Have you ever looked at the hard drive that is reflected
25 on here as containing the images?

1 A. Not the actual hard drive, no.

2 Q. Okay. So how do you conduct your review of the images
3 then?

4 A. They were provided in an extraction report, which I have
5 seen.

6 Q. Okay. Was that a Cellebrite?

7 A. I believe so.

8 THE COURT: Was that a what?

9 MR. JEFFRESS: A Cellebrite extraction.

10 THE COURT: Okay.

11 THE WITNESS: Yes.

12 BY MR. JEFFRESS:

13 Q. In paragraphs 13 and 14, you discuss the forensic
14 processing that the other agent did of the iPhone -- or I'm
15 sorry Agent Delacourt discusses the forensic processing that
16 the other agent did, correct?

17 A. Correct.

18 Q. And have you talked to Agent Delacourt about that
19 forensic processing and read the affidavit?

20 A. Not specifically beyond that it was completed.

21 Q. All right. Are you aware of any of the search protocols
22 that were used by the agents who searched Mr. Nader's phone?

23 A. No, sir.

24 Q. You don't know whether they used any kind of restrictions
25 on the amount of information they were accessing from the

1 phone?

2 A. I don't.

3 Q. Were you aware of any limits, whatsoever, by either, you
4 know, your team or the Office of Special Counsel's team, that
5 searched Mr. Nader's phone, to limit the extraction of
6 information?

7 MS. FONG: Objection, Your Honor. Speaking to facts
8 outside of the record.

9 THE COURT: Objection overruled.

10 MR. JEFFRESS: I'm sorry?

11 THE COURT: Overruled.

12 MR. JEFFRESS: Thank you.

13 THE WITNESS: I'm not sure if I understand the
14 question. Can you --

15 BY MR. JEFFRESS:

16 Q. Are you aware of any limits to -- are you aware of any
17 efforts to limit the amount of information that was extracted
18 from the phones by either your team or the Office of Special
19 Counsel's team?

20 A. So limit the extraction, I'm not aware of any. I do know
21 that a second search warrant was obtained as a result of
22 evidence outside the scope of the original search warrant.

23 Q. Right, but that search warrant was obtained based on what
24 an agent, who was working on the other investigation, as its
25 referred to in the affidavit, saw on the phone, correct? Or

A. Skelton - Cross

17

1 in his --

2 A. Correct.

3 Q. All right.

4 THE COURT: Could you speak up a little bit?

5 MR. JEFFRESS: Sure. I'm sorry, Your Honor.

6 BY MR. JEFFRESS:

7 Q. So by the time that that search warrant was obtained, an
8 agent of the FBI had already looked at the images present on
9 Mr. Nader's phone, correct?

10 A. Can you repeat that? I'm sorry.

11 Q. By the time the -- the warrant you just referred to.

12 A. The first one or the second one?

13 Q. The second one.

14 A. The second one. Okay.

15 Q. Yes, the one obtained by your team.

16 A. Okay.

17 Q. That was obtained based on images that had been, you
18 know, uncovered or seen by the agent working for the Special
19 Counsel's team, correct?

20 A. Correct.

21 Q. All right. And that was the basis for obtaining the
22 warrant, correct?

23 A. Correct.

24 Q. Now, does that agent, the agent who works on the Special
25 Counsel's team, as far as you know, does he work on the Child

1 Exploitation Task Force?

2 A. Not as far as I'm aware.

3 Q. Has he ever?

4 A. Not as far as I'm aware.

5 Q. Does he have any experience prosecuting child pornography
6 offenses?

7 A. That I have -- could not speak to.

8 Q. So you don't know if he's had training on what
9 constitutes child pornography?

10 A. I do not.

11 Q. Okay. So after that agent uncovered those images, you
12 and Agent Delacourt got involved; is that correct?

13 A. No, sir. Just Agent Delacourt.

14 Q. Okay. When did you get involved?

15 A. Thursday of last week.

16 Q. Okay. So given that you have not personally seen the
17 phone, are you able to explain how the images are on the
18 phone?

19 A. It's my understanding that they are contained within
20 WhatsApp chat images that are stored on the phone.

21 Q. So, in other words, they're attachments to WhatsApp
22 messages; is that correct?

23 A. Correct.

24 Q. And is that the only way that images were present on Mr.
25 Nader's phone?

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A. Skelton - Cross

19

1 A. I can't speak to anything else. My understanding and my
2 knowledge is that the 12 files discussed in this affidavit are
3 all contained in the WhatsApp messages.

4 Q. Okay. So you're not aware of any other source of child
5 pornography on Mr. Nader's phone except for what he's been
6 sent by someone else on WhatsApp?

7 A. Two of the files were sent out via WhatsApp.

8 Q. Okay. But in terms of how he received them? You mean he
9 must have received them at some point in order to send them
10 out --

11 THE COURT: When you say that they were sent out,
12 you mean that -- that these images or the videos were sent out
13 from the defendant's phone to someone else?

14 THE WITNESS: Correct.

15 THE COURT: Okay. I'm sorry. I didn't mean to
16 interfere with your question.

17 MR. JEFFRESS: Oh, I'm sorry. Thank you, Your
18 Honor.

19 BY MR. JEFFRESS:

20 Q. Whoever was using the WhatsApp on Mr. Nader's phone, how
21 that person received the images was through WhatsApp, correct,
22 as far as you know?

23 A. I couldn't say one way or the other. The outgoing videos
24 are not reflected in the incoming messages, so I don't know
25 where they've come from.

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1 Q. Okay. So they might have just been deleted at some point
2 from WhatsApp, is that a possibility based on your
3 understanding?

4 A. I couldn't speak to where they came from. All I know is
5 they were sent out via WhatsApp.

6 Q. All right. So you're not aware, though, of any other
7 source -- you don't know of one, other than WhatsApp, on Mr.
8 Nader's phone?

9 A. Correct.

10 Q. Okay. So in your cases, frequently, working in this
11 section, you have people who download commercial pornography
12 from websites, correct?

13 A. Correct.

14 Q. You have people who participate in peer-to-peer networks
15 where they -- where they share child pornography by posting on
16 various bulletin boards, right?

17 A. Correct.

18 Q. Lack of better term, correct?

19 A. Yes.

20 Q. And there is no evidence of any type -- of any kind like
21 that in Mr. Nader's case, correct?

22 A. I have not reviewed the full extraction report or the
23 entire contents of the phone or the other phones, so I can't
24 speak to whether or not additional evidence exists. All I can
25 speak to is the evidence that I have seen, which are the 12

1 videos.

2 Q. All right. So you're not aware of anything else?

3 A. Correct.

4 Q. And in this case, the way the WhatsApp messages work,
5 that they contain the child pornography, are they stacked one
6 on top of each other; in other words, for lack of a better
7 word, strings of messages?

8 A. They're shortened conversations, so the entirety of a
9 conversation between identical participants is stored
10 chronologically.

11 Q. Okay. And you said that there were -- withdrawn.

12 Do you know were any of the evidence of the
13 distribution of the images support that they -- that those
14 images were sent out in the United States?

15 A. I don't know.

16 Q. Okay. So you don't have -- you're not aware of any
17 evidence demonstrating that these images were either received
18 or sent out in the United States?

19 A. Correct.

20 Q. Correct?

21 A. Correct.

22 Q. And -- okay. I want to get into the images, if that's
23 okay.

24 First, let me just ask you a question. Do you know
25 what the National Center for Missing and Exploited Children

A. Skelton - Cross

22

1 is?

2 A. I do.

3 Q. Okay. And do you know about the database that they keep
4 of child --

5 A. I do.

6 Q. -- of known child pornography images?

7 A. Yes, sir.

8 Q. Okay. Can you explain what that is?

9 A. It's a database maintained, as you described, which it
10 has two parts, a database of images and videos of child
11 pornography where the victims are known to law enforcement, to
12 the National Center.

13 And then, a second database of images and videos
14 which have been seen before by the National Center, have been
15 submitted by law enforcement, but the subjects of those videos
16 are unknown.

17 Q. Okay. And it's actually an extremely thorough and large
18 database, correct?

19 A. Yes.

20 Q. And the effort there, at least what they're trying to do,
21 is to capture every known image of child pornography in the
22 world and then assign a unique numeric identifier to it; isn't
23 that correct?

24 A. I can't speak to whether or not there's identifiers. We
25 regularly submit our information so that it can be added to

1 the database to make it as robust as possible. But --

2 Q. That's right. And that's what you guys are trying to do,
3 right?

4 A. Correct.

5 Q. You're trying to make that database as complete and total
6 as possible, in terms of being a reliable source for all the
7 child pornography that's out there, correct? That's the
8 effort?

9 A. An attempt, yes.

10 Q. All right. And in fact, what you do when you have an
11 image -- or a standard operating procedure for agents, when
12 you have an image that, you know, you don't know whether
13 they've qualified it as child pornography or not, to submit a
14 technical request to the -- to NCMEC?

15 A. No. That's not completely accurate, no.

16 Q. Okay. Well, what --

17 A. The National Center does not make any determinations
18 about whether an image or a video is or is not child
19 pornography. They simply catalog it and notify us if the
20 video image or video has been seen before and/or if the child
21 in that or the person in that video is an identified child.

22 Q. Okay. And the first thing you said there was whether
23 that image had been seen before?

24 A. Correct.

25 Q. Okay. And so whether they had had it -- have it in their

1 database?

2 A. Correct.

3 Q. And the whole purpose of the database is to collect all
4 the child pornography images out there, right, or as many they
5 can get their hands on?

6 A. I don't know that I can answer that question. That's
7 probably a better question for the agency.

8 Q. Okay. Do you know -- did you submit the 12 images that
9 are at issue in this case; did you or Agent Delacourt, or
10 anyone else, as far as you know?

11 A. I have not. I suspect they haven't yet been submitted.
12 Usually, that's done near or to the end of the case.

13 Q. I'm sorry. Can you repeat that?

14 A. Usually, they're submitted near or to the end of the case
15 once full forensics are complete, everything is done. But I
16 can't speak to whether Agent Delacourt has or has not.

17 Q. I mean this case has been around since what? You guys
18 have had -- the FBI has had the phone since January of 2018?

19 A. As I've said, I've been assigned to this case since
20 Thursday, so I can't speak to what else has been done.

21 Q. Are you aware of any discussion about submitting the
22 images to NCMEC --

23 A. I have not.

24 Q. -- for ascertainment; no?

25 A. No.

1 Q. You don't know why that hasn't been done?

2 A. I'm sorry?

3 Q. You don't know why that -- do you know whether it's been
4 done or not? Let me just clarify that.

5 A. I don't know, one way or another. I do not know.

6 Q. Okay. But you don't -- you're certainly not aware of any
7 effort to do that?

8 A. Correct.

9 Q. All right. I think on direct examination you talked
10 about the definition of sexually explicit conduct and what
11 child pornography was?

12 A. Yes, sir.

13 Q. Okay. And you've reviewed the 12 images in this case?

14 A. Videos, yes.

15 Q. Videos. Okay. And let's just -- and they are set forth
16 at -- let's start on page 6 of the affidavit in paragraph 16.

17 And I believe you went over that in your direct
18 examination?

19 A. Yes, sir.

20 Q. Okay. Can you tell me, first of all, which two videos
21 were sent out?

22 A. I don't recall. I can't recall.

23 Q. You don't recall which of the 12 videos were sent out?

24 A. Correct, I don't recall which two. Since it is a
25 transportation charge and not a distribution charge.

1 Q. But it still has to be child pornography?

2 A. Correct.

3 Q. Yes, right?

4 A. Correct.

5 Q. Okay. So have you personally watched each of these
6 images?

7 A. I have. Videos, yes.

8 Q. Each of these videos, I'm sorry.

9 And it's your opinion that all of these are child
10 pornography?

11 A. Yes, sir.

12 Q. Okay. I mean video F - I'm sorry subparagraph F, video
13 number 6 is three seconds in length?

14 A. Yes, sir.

15 Q. And that to you qualified as child pornography, you saw
16 enough there?

17 A. The definition under 2256 includes masturbation, and
18 that's exactly what's occurring in that video.

19 Q. So all right, let's just go -- again, unfortunately, you
20 don't which ones were sent out and which ones were received?

21 A. Correct.

22 (Reporter clarification.)

23 BY MR. JEFFRESS:

24 Q. Okay. And so let me just ask: Video 1, I think you
25 referred to that one during your direct examination. You

1 know, what evidence are you aware of that Mr. Nader knowingly
2 had that on his phone?

3 A. As I indicated, these messages were received during a
4 WhatsApp chat message -- chat conversation that then
5 continues. The images and -- videos, rather, are not deleted.
6 They're present on the phone in their original native state,
7 and he was engaging in that -- or someone using that cell
8 phone was engaging in that conversation.

9 Q. Well, what's the conversation?

10 A. It's not in English, so I can't speak to that.

11 Q. Okay. So you don't know what it is?

12 A. Correct.

13 Q. All right. So there's no evidence from the chats
14 themselves, that you're aware of, at least in the untranslated
15 form, that support the fact that there was knowing possession
16 of any of these images, correct?

17 A. They came in, the conversation continues. The way a
18 WhatsApp conversation occurs, you see the message as it
19 appears.

20 Q. But if you can't translate the conversation, then the
21 conversation is useless to you as evidence; is that fair?

22 A. The content. I can see that there are incoming and
23 outgoing messages, and therefore there is a conversation
24 occurring. I don't know what the content of that conversation
25 is, but there is a conversation.

1 Q. Okay. And is there a way to see whether the video has
2 actually been accessed, and opened, and watched?

3 A. I don't know the answer to that from the information that
4 I have in front of me right now.

5 Q. No?

6 A. I can't speak to that.

7 Q. Okay. So you're not aware of any way, technically or
8 otherwise, and you have not done any investigation, you're not
9 aware of any investigation, that shows that those images were
10 actually accessed and watched by Mr. Nader or anybody else?

11 A. I don't -- there's no information that I have currently
12 to answer that question, no.

13 Q. Okay. So I think we talked about video 1. I don't want
14 to take up too much of the Court's time by going through each
15 video.

16 So I'll just ask you: Other than what you've just
17 referred to, which is, you know, a conversation that's in a
18 foreign language, and the fact that, you know, the video is
19 received and two were sent out -- but we can't say which
20 ones -- that's the only evidence you have that these were --
21 the only ones that you're aware of, that these images were
22 possessed knowingly?

23 A. Correct.

24 Q. Okay. And do you have any evidence that -- you don't
25 have any statements from Mr. Nader to law enforcement?

A. Skelton - Cross

29

1 A. Not that I'm aware of.

2 Q. Okay. And you're not aware of any statements, other than
3 in a foreign language that you haven't been able to read, of
4 Mr. Nader to anyone else supporting knowing possession of
5 these images?

6 A. Not that I'm aware of, no.

7 THE COURT: Has there been a transcription of the
8 audio in any of the videos?

9 THE WITNESS: My understanding is it's been
10 requested from language services.

11 THE COURT: And what about the WhatsApp chats?

12 THE WITNESS: The same. Also requested from
13 language services.

14 THE COURT: When was it requested?

15 THE WITNESS: I don't know the answer to that, Your
16 Honor.

17 MR. JEFFRESS: Court's indulgence.

18 (A pause in the proceedings.)

19 BY MR. JEFFRESS:

20 Q. Okay. There's only one example of actual -- well,
21 intercourse in any of these examples, correct?

22 A. Yes, sir.

23 Q. Okay. Do you know -- just a few more questions -- do you
24 know on the phone how the -- they were never placed into
25 folders, correct, the images?

A. Skelton - Cross/Redirect

30

1 A. No, my understanding is they are still in their native
2 form inside of the chat conversation.

3 Q. So they were never downloaded?

4 A. Not that I'm aware of.

5 Q. Okay.

6 MR. JEFFRESS: Court's indulgence.

7 (A pause in the proceedings.)

8 MR. JEFFRESS: No further questions, Your Honor.

9 THE COURT: Thank you, Agent.

10 Redirect, Ms. Fong?

11 **REDIRECT EXAMINATION**

12 BY MS. FONG:

13 Q. Special Agent Skelton, on direct you testified that 10 of
14 the 12 videos, described in the complaint affidavit, were
15 received on the phone in Mr. Nader's possession, correct?

16 A. Yes.

17 Q. And that two of the videos described in the complaint
18 affidavit were sent from Mr. Nader's phone to someone else,
19 correct?

20 A. Yes.

21 Q. Have you also reviewed information in the case indicating
22 that Mr. Nader was previously convicted of
23 child pornography-related offenses?

24 THE COURT: What does this have to do with probable
25 cause?

A. Skelton - Redirect

31

1 MR. JEFFRESS: Thank you, Your Honor.

2 MS. FONG: Your Honor, I'm trying to establish the
3 state of mind.

4 THE COURT: State of mind of who?

5 MS. FONG: Of the defendant, Your Honor.

6 I'll ask a different question, and we'll come back
7 to it if it's relevant then.

8 BY MS. FONG:

9 Q. Special Agent Skelton, in your experience and training,
10 when someone receives videos containing sexually explicit
11 depictions of minors and then also sends videos containing
12 sexually explicit images of minors, is that consistent with
13 the state of mind of someone who has knowledge of its
14 contents?

15 A. Yes.

16 MS. FONG: Court's indulgence, Your Honor.

17 (A pause in the proceedings.)

18 BY MS. FONG:

19 Q. Special Agent Skelton, are you aware of whether Mr. Nader
20 was previously convicted of child pornography related offense?

21 MR. JEFFRESS: Objection.

22 THE COURT: It's in part of the record. It doesn't
23 really matter. Objection is overruled.

24 MS. FONG: Nothing further from the Government, Your
25 Honor.

1 THE COURT: All right. Thank you.

2 You may step down, Agent.

3 (Witness excused.)

4 THE COURT: Does the Government have any other
5 witnesses?

6 MS. FONG: No, Your Honor.

7 THE COURT: I assume the defendant has no witnesses.

8 MR. JEFFRESS: No witnesses, Your Honor.

9 THE COURT: Do you have argument as to probable
10 cause?

11 MR. JEFFRESS: Yes, I do, Your Honor.

12 THE COURT: Ms. Fong, I'd like you to make your
13 argument first. And I'd like, specifically, to know why the
14 Government -- when was the search warrant executed, when were
15 the images downloaded, or forensically extracted, I should
16 say?

17 MS. FONG: Your Honor, I believe the extraction was
18 performed in January of 2018 and that it was reviewed in
19 February of 2018.

20 THE COURT: Well, the search warrant for this case
21 was not issued until --

22 MS. FONG: March, Your Honor.

23 THE COURT: So when was that? You say they went
24 ahead and extracted everything with the first search warrant?

25 MS. FONG: Once there was a search warrant issued in

1 the instant case, my understanding is the case agent
2 immediately obtained the evidence on the hard drive.

3 THE COURT: All right. So the Government has had
4 the full extraction since at least March of 2018, if not
5 earlier?

6 MS. FONG: I believe that's the case.

7 THE COURT: Why did the Government wait 15 months to
8 bring these charges?

9 MS. FONG: We didn't, Your Honor. We brought the
10 case -- we charged Mr. Nader in April of 2018, but he was
11 outside of the country, Your Honor. There's a date-stamp on
12 the complaint affidavit, which has a date-stamp of April 19,
13 2018.

14 THE COURT: And he, though, has come back and forth.

15 MS. FONG: He has not, Your Honor. My understanding
16 is he came back and forth in relation to the other unrelated
17 matter.

18 THE COURT: He came back and forth to the United
19 States.

20 MS. FONG: Not since the charges were filed, Your
21 Honor.

22 THE COURT: Not at all since April of 2018?

23 MS. FONG: My understanding is, no, Your Honor.

24 So we have been waiting to see whether he would come
25 back.

1 THE COURT: I see. All right. Anything else as to
2 probable cause?

3 MS. FONG: Your Honor, just briefly.

4 We believe that the complaint affidavit sets forth
5 more than what is necessary to establish probable cause for
6 the charge in this case. Mr. Nader traveled with a phone
7 containing sexually explicit images, depicting minors from
8 overseas into Washington Dulles International Airport, where
9 his phone was thereafter seized and analyzed. And that
10 constitutes the transportation charge that's outlined in the
11 complaint.

12 MR. JEFFRESS: Your Honor, I just -- with all
13 respect to the Government, in this one, it doesn't make it.

14 You know if they had maybe translated those chats,
15 those chats, and if they found knowledge of -- that he did
16 this knowingly, that he sent images out or had those images on
17 his phone knowingly, then possibly. They also don't have
18 proof that any of this happened in the United States. The
19 fact --

20 THE COURT: Well, he transported it into the United
21 States. That's what he's charged with.

22 MR. JEFFRESS: Knowingly transporting it; correct,
23 Your Honor.

24 THE COURT: Right.

25 MR. JEFFRESS: Yes. And, you know, the idea that he

1 would voluntarily just identify an iPhone that he knows has
2 got child pornography on it is just -- I don't think
3 that's within the realm of possibility --

4 But furthermore, like they don't have proof that he
5 ever really knowingly did that. I mean if you look at these
6 images, it's clear not all of them are child pornography.

7 THE COURT: I'm not sure that I would agree with you
8 on that.

9 MR. JEFFRESS: I don't think -- I think it's a very
10 strong question about whether they meet the definition. You
11 know I don't understand why they would not have submitted them
12 to the main authority on child pornography who they -- the
13 Government contracts with and works with on a daily basis on
14 these cases --

15 THE COURT: I understand what you're saying. But, I
16 don't think that anybody here would believe that the -- that
17 that agency is the determiner of who, what is, and what is not
18 child pornography.

19 I mean I can't believe that you would argue that
20 they're the authority when the Government is the one bringing
21 the charges. It has to be up to the Department of Justice and
22 the FBI as to whether or not something constitutes child
23 pornography and not the National Center for the --

24 MR. JEFFRESS: I think ultimately it's up to the
25 Court or to the --

1 THE COURT: Well, it is.

2 MR. JEFFRESS: Yeah.

3 THE COURT: But they're not the arbiters of that.
4 The National Center is not the arbiter of what is or what is
5 not child pornography. So surely you're not contending that.

6 MR. JEFFRESS: I just think this would be a
7 significantly stronger case if they had done that and these
8 were identified --

9 THE COURT: Well, that might be what you think, but
10 what's your argument here as to probable cause? I mean he's
11 charged with transporting it into the United States. And
12 whether or not he voluntarily revealed that he had this
13 particular iPhone with him, among several electronic devices,
14 I'm not sure how that's really cutting it one way or another,
15 as to whether or not he knew it was on there.

16 And what about the fact that it was also two of the
17 images or two of the videos were also not only received but
18 sent.

19 MR. JEFFRESS: Right. We don't know what the
20 context was. We don't -- they haven't even been able to show
21 that was -- you know, they haven't even been able to show that
22 that was even Mr. Nader. I mean it was on his phone, but --
23 we don't know what was said in those images. We don't know
24 whether he was sending it back to the person and saying, don't
25 send me this stuff anymore.

1 I mean they have had those messages for quite a long
2 time without engaging the services of a translator who could
3 have very easily told us what they said. But without that
4 content, I don't think we could say that he knowingly
5 possessed child pornography. It very well could --

6 THE COURT: But that's not what he was charged with.
7 He was charged with transporting it.

8 MR. JEFFRESS: Knowingly, yes.

9 THE COURT: Right.

10 MR. JEFFRESS: And so I mean, the fact he has it
11 only in this one app, where it's not even clear, you know, why
12 it's preserved or that he ever even really accessed it with --
13 except with respect to maybe two images, that they can't
14 identify which ones those are.

15 So I think it's just too thin. It's too thin on
16 this record, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. JEFFRESS: Thank you.

19 THE COURT: Look, I agree with you. I think that it
20 would have been helpful if the Government had received the
21 translation of the conversation on WhatsApp, as well as the
22 conversation on the videos.

23 But the fact of the matter is that probable cause is
24 a rather low bar. The defendant transported these images into
25 the United States. I, frankly, think that there's no real

1 issue here as to whether or not they are child pornography.

2 But I believe that the Government has established probable
3 cause for the charges to be brought against the defendant.

4 All right. Is there anything else?

5 MS. FONG: Nothing further from the Government, Your
6 Honor.

7 THE COURT: Court stands in recess.

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9 **(Proceedings adjourned at 3:39 p.m.)**
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CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Preliminary hearing in the case of the **UNITED STATES OF AMERICA versus GEORGE AREF NADER**, Criminal Action No. 1:18-MJ-196, in said court on the 10th day of June, 2019.

I further certify that the foregoing 39 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this June 10, 2019.



Tonia M. Harris, RPR
Official Court Reporter